

SUPREME COURT OF INDIA

Vivek Mudgil

Vs.

State of U.P.

C.A.No.11863-11864 of 2018

(L.Nageswara Rao nad R.Subhash Reddy,JJ.,)

05.12.2018

JUDGMENT

R.Subhash Reddy,J.,

SLP(C)No.14384-14385 of 2015

1. Application seeking impleadment of the applicants is allowed as prayed for.
2. Leave granted in Special Leave Petitions.
3. These civil appeals are filed by the appellant aggrieved by the order dated 08.04.2015 passed by the High Court of Judicature at Allahabad in Special Appeal Nos.189 and 190 of 2015. By the aforesaid order, the Division Bench of the High Court has confirmed the order dated 19.03.2015 Impassed by the learned Single Judge in writ petitions filed under Article 226 of the Constitution of India in which an order dated 10.12.2008 passed by the U.P. Secondary Education Services Selection Board (hereinafter referred to as 'the Board') was under challenge.
4. The Board has issued an advertisement on 03.03.2002 inviting applications for appointment to the post of Principal. The last date for submission of applications was 30.03.2002. The qualifications prescribed were - (i) the possession of a Post Graduate degree from an institution or a university established in accordance with law; and (ii) possession of a training qualification, namely, B.Ed. L.T., B.T. and B.P.Ed. The advertisement contained a stipulation requiring teaching experience of ten years in intermediate classes of any recognised institution together with a post graduate degree in the first or second class or a teaching experience of fifteen years for a candidate possessing post graduate degree in the third class.
5. The appellant herein was originally appointed as Lecturer in Physics and his services were regularised from 12.01.1990. He was on study leave for the period between 15.04.1992 to 08.03.1996. It is not in dispute that on the last date of submission of the applications,

pursuant to advertisement issued by the Board, the experience of the appellant was 9 years and 3 months as against the requirement of 10 years. Initially the Board prepared a panel of selected candidates in the month of August 2002, which contained the name of the appellant herein. In view of the litigation concerning selection of panels, the said panel was not operated for the purpose of issuing appointment orders. Only after orders are passed by this Court in the month of May 2008, the panel prepared in the year 2002 was operated and the appellant was appointed as the Principal of the college and he joined as such on 15.07.2008. On 18.07.2008, a complaint was lodged before the District Inspector of Schools, Jhansi alleging that appellant did not possess 10 years of teaching experience and same was mandatory for selection to the post of Principal as per U.P. Secondary Education Services Selection Board Rules 1998 read with Regulation 1 of Chapter II of the Regulations framed under the Intermediate Education Act 1921. In view of such complaint, on the ground that appellant herein has not fulfilled required qualification of 10 years' experience, his appointment was cancelled on 10.12.2008, which order was subject matter of challenge in the writ petition filed by the appellant herein before the High Court of Allahabad. The learned Single Judge has dismissed the writ petitions by order dated 19.03.2015 by holding that, the period during which the appellant was on study leave cannot be counted towards teaching experience and on the last date of submission of applications, the appellant did not fulfill the required eligibility criterion, i.e., possessing ten years of teaching experience. The learned Single Judge, by recording a finding that the appointment could not be protected under Article 226 of the Constitution of India, rejected the petitions.

6. Said order was challenged by way of Special Appeal being S.A.Nos.189 and 190 of 2015 mainly on the ground that possession of 10 years of experience cannot be regarded as an essential qualification in view of the power conferred on the Board under proviso to Section 16-E(3) of the 1921 Act. The Division Bench of the High Court, rejecting the plea of the appellant herein, dismissed the Special Appeals by recording a finding that after enforcement of the U.P. Secondary Education Services Selection Board Act, 1982 the requirement of 10 years' teaching experience is a necessary qualification and is mandatory.

7. During the pendency of the proceedings, the Board has issued exemption proceedings in favour of the appellant granting exemption of 9 months of teaching experience. As pleaded in the counter affidavit it is stated that such an exemption order was passed in view of the order dated 08.07.2015 passed by this Court in Special Leave Petitions. When order of exemption is passed, such order was again challenged by way of writ petition before the High Court which is ordered to be transferred to this Court and on such transfer the same is numbered as Transferred Case (C)No.5 of 2018 which is also taken up for hearing along with these civil appeals. For the sake of convenience, the facts of the civil appeals are being referred to.

8. We have heard learned counsel on both sides appearing in civil appeals as well as in transferred case and perused the material on record.

9. It is not in dispute that as on the last date of submission of applications pursuant to the advertisement issued by the Board inviting applications for appointment to the post of

Principal, the appellant herein was having only 9 years 3 months of teaching experience. Even as per the notification, having regard to academic qualification possessed by the appellant, there was a requirement of 10 years of teaching experience. It is not in dispute that the appellant had only 9 years 3 months of teaching experience on the last date of making applications. Mainly the writ petitions were filed in the High Court alleging that his period of foreign study leave is to be computed for the purpose of computing the teaching experience of 10 years. It was the case before the High Court that as he was granted leave as per the leave rules and he was also granted increments for the said period, as such, such period has to be computed. It is to be noticed at this stage that he was granted scholarship for higher studies in Czechoslovakia. It is not in dispute that from 15.04.1992 to 08.03.1996 he was studying in Czechoslovakia and same cannot be considered as a teaching experience. Further, having regard to the requirements in the Regulations teaching experience of 10 years is rightly considered as a necessary qualification by the Division Bench of the High Court.

10. Before this Court, it is pleaded that in view of the exemption granted he is entitled to continue as Principal of the college. We have also perused the order of exemption which is granted during the pendency of the proceedings. It is stated in the counter affidavit, such an exemption is granted in view of the order passed by this Court on 08.07.2015. The order dated 08.07.2015 passed by this Court reads as under:

"The contention of the petitioner is that the petitioner was working as Lecturer in another college when he was selected as principal in Respondent No.5-College in the year 2002 and where he worked till 2008. He submits that in order to join the services with respondent No.5 as Principal to which post he was selected, he resigned as Lecturer where he was serving earlier and after his termination as Principal, the petitioner is left high and dry as he is not working anywhere now. Issue notice to the respondents on the limited aspect as to how this situation can be salvaged, if at all."

11. It is clear from the aforesaid order that there was no direction at all to consider for grant of exemption. By all fairness, when the matter is seized before this Court respondent-authorities should not have passed any order granting exemption in favour of the appellant. In any event, from the perusal of the order, it is clear that no retrospective effect is given to such exemption proceedings. Even by grant of such exemption it will not cure the disqualification of the appellant as on last date of submission of the applications and on the date of preparing the panel. In the absence of any such express provision granting retrospective effect, even the exemption granted will not come to the rescue of the appellant to support his case. It is also pleaded that after the enforcement of the provisions of the U.P. Secondary Education Services Selection Board Act 1982, the power of exemption is also not available but the same is not required to be considered at this stage as we are of the view that exemption granted also will not come to the rescue of the appellant to make his selection and appointment valid. Having regard to the notified required qualifications under the Regulations, we are in agreement with the view taken by the Division Bench of the High Court that such qualification of 10 years of teaching experience is necessary qualification for appointment to the post of Principal. Although it is pleaded by learned counsel appearing for the respondents that the power of exemption is not available after enactment of the

provisions of 1982 Act but in view of the reasoning assigned by us as referred above, it is not necessary to record any finding on such issue at this stage.

12. For the aforesaid reasons, these appeals are dismissed and consequently the transferred case also stands disposed of. However, the issue, whether the respondent-authorities are empowered to grant any order of exemption in exercise of powers under proviso to Section 16-E(3) of the 1921 Act, after enforcement of the provisions of the 1982 Act is left open. If any such need arises, it is open for the parties to approach the High Court in which event such issue is to be decided independently uninfluenced by the order of the High Court and this Court.